Scheindlin, S.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VERINT SYSTEMS INC. and
VERINT AMERICAS INC.,

Plaintiffs,

v.

RED BOX RECORDERS LTD.,

Defendant.

Case No. 14-cv-5403 (SAS)

PROTOCOL FOR DISCOVERY OF ELECTRONICALLY STORED INFORMATION

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information ("ESI") in this matter:

A. ESI Disclosures

On or before November 9, 2015, each party shall disclose:

1. Custodians. The eight custodians most likely to have discoverable ESI in their possession, custody or control. The custodians shall be identified by name, title, connection to the instant litigation, and the type of the information under his/her control.

2. Non-custodial Data Sources. A list of non-custodial data sources (e.g. shared drives, servers, etc.), if any, likely to contain discoverable ESI.

3. Third-Party Data Sources. A list of third-party data sources, if any, likely to contain discoverable ESI (e.g. third-party email and/or mobile device providers, "cloud" storage, etc.) and, for each such source, the extent to which a party is (or is not) able to preserve information stored in the third-party data source.

4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(C)(i). Note: Section (C)(3)(a-(i) below sets forth data sources and ESI which are not required to be preserved by the parties. Those data sources and ESI do not need to be included on this list.

5. Email Production Requests. Email production requests shall only be propounded for specific issues rather than general discovery of a product or business. Email production requests shall identify the search terms and time frame. The parties shall cooperate to identify the proper search terms and proper time frame.

B. Preservation of ESI

The parties acknowledge that they have a common law obligation to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody or control. With respect to preservation of ESI, the parties agree as follows:

1. Absent a showing of good cause by the requesting party, the parties shall not be required to modify the procedures used by them in the ordinary course of business to back-up and archive data; provided, however, that the parties shall preserve all discoverable ESI in their possession, custody or control.

2. All parties shall supplement their disclosures in accordance with Fed. R. Civ. P. 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure where that data is created after a disclosure or response is made (unless excluded under (C)(3) or (D)(1)-(2) below).

3. Absent a showing of good cause by the requesting party, the following categories of ESI need not be preserved:

a. Deleted, slack, fragmented, or other data only accessible by forensics.

b. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system.

c. On-line access data such as temporary internet files, history, cache, cookies, and the like.

d. Data in metadata fields that are frequently updated automatically, such as last-opened dates.

e. Back-up data that are substantially duplicative of data that are more accessible elsewhere.

f. Server, system or network logs.

g. Data remaining from systems no longer in use that is unintelligible on the systems in use.

h. Electronic data (e.g. email, calendars, contact data, and notes) sent to or from mobile devices (e.g., iPhone, iPad, Android, and Blackberry devices), *provided* that a copy of all such electronic data is routinely saved elsewhere (such as on a server, laptop, desktop computer, or "cloud" storage).

i. Text messages

j. Social media data.

C. Privilege

1. With respect to privileged or work-product information generated after the filing of the complaint, parties are not required to include any such information in privilege logs.

2. Activities undertaken in compliance with the duty to preserve information are protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

3. Information produced in discovery that is protected as privileged or work product shall be immediately returned to the producing party, and its production shall not constitute a waiver of such protection, if: (i) such information appears on its face to have been inadvertently

produced or (ii) the producing party provides notice within 15 days of the producing party's discovery of the inadvertent production.

4. The receiving party shall not use ESI that the producing party asserts is attorney-client privileged or work product protected to challenge the privilege or protection.

D. ESI Discovery Procedures

1. On-site inspection of electronic media. Such an inspection shall not be permitted absent a demonstration by the requesting party of specific need and good cause or by agreement of the parties.

2. Search methodology.

a. Each requesting party shall limit its email production requests to a total of twenty-two (22) search terms per side, distributed across custodians as necessary. The parties may jointly agree to modify this limit without the Court's leave. A conjunctive combination of multiple words or phrases (e.g., "computer" and "system" or "computer w/5 system") as well as variations of the same term ("0,000,000" or "00000000" or "000 w/2 patent") shall count as a single search term. Combinations of search terms that include connecters other than "and" and "or" must be expressly provided by the requesting party and must be capable of execution in a single search command to be considered a single search term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") or combinations with connecters that cannot be executed in a single search command shall count as two or more separate search terms. Should a party serve email production requests with search terms beyond the limits agreed to by the parties, the requesting party shall bear all reasonable costs caused by such additional discovery so long as the producing party has notified the requesting party of an estimate of such costs ten business days prior to incurring them. In this circumstance, the producing party shall not be required to produce any material responsive to the search terms beyond the limits agreed to by the parties until after the requesting party has agreed to and paid for the estimated costs.

b. Absent a showing of good cause, each search term or query returning more than 250 megabytes of data are presumed to be overbroad, excluding Microsoft PowerPoint files, image and audio files, and similarly large file types.

c. The producing party shall search both non-custodial data sources and ESI maintained by the custodians identified above.

3. Format.

a. The parties agree that ESI will be produced to the requesting party with searchable text, in the following formats:

(i) Single page non-searchable TIFF (1 bit, black and white) or PDF images for email and Word documents; and

(ii) Single page, color non-searchable JPEG or PDF images for presentation (e.g., PowerPoint) and other graphic files.

b. Each document image file shall be named with a unique Bates Number (e.g. the unique Bates Number of the page of the document in question, followed by its file extension). File names should not be more than twenty characters long or contain spaces. When a text-searchable image file is produced, the producing party must preserve the integrity of the underlying ESI, i.e., the original formatting, the metadata (as noted below) and, where applicable, the revision history. The parties shall produce their information in the following format: single-page images and associated multi-page text files containing extracted text or with appropriate software load files containing all requisite information for use with the document management system (e.g., Concordance® or Summation®), as agreed to by the parties,

c. The full text of each electronic document shall be extracted ("Extracted Text") and produced in a text file. The Extracted Text shall be provided in searchable ASCII text format (or Unicode text format if the text is in a foreign language) and shall be named with a unique Bates Number (e.g. the unique Bates Number of the first page of the corresponding production version of the document followed by its file extension).

d. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained as they existed in the original document.

4. Spreadsheet documents (e.g., Excel, CSV, etc.) may be produced in native format or as pre-formatted TIFF or PDF images in printable format. If a party elects to produce spreadsheet documents in TIFF or PDF format, metadata showing the date and time that the spreadsheet was created or modified, as well as the author, shall be preserved and the producing party shall review the documents at issue in advance of production and ensure that excess blank pages or pages containing partial spreadsheet images are not included within the production set. A receiving party may request the production of spreadsheet documents in native format by specifying the document that it seeks to have produced in native format and the reason why the production of the document in native format is requested, which request shall not be denied absent a good cause for failing to produce the document in native format.

5. De-duplication. The parties may de-duplicate their ESI production across custodial and non-custodial data sources before disclosure to the requesting party.

6. Metadata fields. Each party shall produce the following metadata associated with ESI to the extent reasonably accessible: (a) the author(s) of the ESI; (b) the recipient(s) of the ESI; (c) the date the ESI was created; and (d) the source from which the ESI was produced. The "source" of ESI shall be the name of the person who was the custodian of the ESI or, if the name of a person is not available, the storage location (e.g., "Regulatory Shared Drive–Wayne, PA"). This

information will be included in the "Author," "Recipient," "Date," and "Source" fields (respectively) for each document in the load file associated with the document images.

7. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an electronic format, the production of hard-copy documents shall include a cross-reference file that indicates document breaks and sets forth the Custodian or Source associated with each produced document. Hard-copy documents shall be scanned using Optical Character Recognition technology and searchable ASCII text files shall be produced (or Unicode text format if the text is in a foreign language), unless the producing party can show that the cost would outweigh the usefulness of scanning (for example, when the condition of the paper is not conducive to scanning and will not result in accurate or reasonably useable/searchable ESI). Each file shall be named with a unique Bates Number (e.g. the Unique Bates Number of the first page of the corresponding production version of the document followed by its file extension).

8. Privilege Log Based on Metadata. The parties agree that privilege logs shall be provided 30 days after the date agreed upon for final production in this matter. The privilege log shall include a unique identification number for each document and the basis for the claim (attorney-client privileged or work-product protection). For ESI, the privilege log may be generated using available metadata, including author/recipient or to/from/cc/bcc names; the subject matter or title and date created. Should the available metadata provide insufficient information for the purpose of evaluation the privilege claim asserted, the producing party shall include such additional information as required by the Federal Rules of Civil Procedure.

Dated: October 26, 2015

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Dated: October 26, 2015

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SO ORDERED this 28 **day of** October**, 2015**

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Hon. Shira Scheindlin
United States District Judge KBF